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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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INDIA: Mere legislation against custodial torture will not end the practice

The Government of India has once again started discussing about coming up with a national legislation to criminalise the practice of custodial torture and ill treatment. The Asian Legal Resource Centre (ALRC) welcomes this move. However, the ALRC is concerned that despite the repeated assurances, nothing much has happened to table the new law in the parliament. In fact, the Union Government is not even engaged in open discussions with the civil society about the new law.

India underwent a similar exercise 6 years ago, when a national legislation was tabled in both houses of the Indian parliament. On that occasion, while the lower house of the parliament passed the law, the upper house constituted a parliamentary select committee that studied the law in detail and suggested amendments to the text of the law that the law to incorporate those essential amendments had to be completely redrafted. It did not happen however, and it has lapsed.

Having a specific legislation against torture and ill treatment is only one of the essential requirements to stem this evil. Torture and ill treatment is not just the result of inhuman policing. It is also the direct result of the policing policies, priorities and the overall environment within which a police officer is required to carryout responsibilities.

Indian police is one of the several state institutions that have never been reviewed to restructure the institution to be capable of undertaking the responsibilities in the manner it is expected of a civilian institution that is central to the realisation of democracy. This means the guiding principles behind the policing policy in the country still remains as it was introduced into India, based on the Irish Constabulary Model. That there is an ocean of difference between the London Metropolitan Model of policing and the Irish Constabulary Model is not known even among senior police officers.

This is one of the reasons why providing facilities to the police, to undertake scientific crime investigation are grossly inadequate in India. For all practical purposes a crime investigation in India begins and ends with the confession of a person in custody. Police lack even basic facilities and training to undertake modern crime investigation and therefore depends on testimonies of persons. Testimonies are often forthcoming when use of force and intimidation are involved, which often leads to the practice of torture in custody. Besides the poor understanding of law, particularly regarding criminal procedures, among senior police officers worsens the situation.

Not many police stations in India have a forensic kit or those having one, do not have adequate training to use such a kit. Therefore, one of the first "professional" who contaminate a crime scene is police officer who visit a crime scene. Once the crime scene is contaminated and evidences damaged, the police could only depend upon oral testimonies of witnesses, and ideally the suspect. This is the reason why not only suspects, but witnesses are also victims of torture.

The list of challenges that the Indian police face is long and shameful for a country that calls itself a modern democracy. Police stations that do not even have proper buildings, communication facilities, vehicles, office furniture, or even paper to record complaints are not rare in the country. Such lacking in facilities not only affects police morale, but also nurtures corruption.

Indian police is today a deeply demoralised institution. No Union or State (provincial) governments in India have ever publically stated that police modernisation as one of their projected goals. No Union Government has published its policing policy in India so far. In fact having no policing policy is India's national policy on policing.

The ALRC therefore is of the opinion that a mere legislation in India to criminalise the currently endemic practice of torture and ill treatment will not be able to address the problem. What is required is for the national and state governments in India to also simultaneously address the operational challenges faced by police.

The ALRC therefore urge the UN Human Rights Council to engage with the Government of India to ensure that no effort is spared in modernising the Indian police, failing which the practice of torture and ill treatment will continue in India.